

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE**

ELROY LADELL RICHMAN,)
)
)
Plaintiff,) **No.: 2:19-cv-02133-JPM-jay**
)
v.)
)
UNITED STATES VETERANS)
AFFAIRS and U.S. GOVERNMENT,)
)
Defendants.)
)

REPORT AND RECOMMENDATION

On February 27, 2019, *pro se* plaintiff, Elroy Ladell Richman, filed this Complaint against the United States Veterans Affairs and the U.S. Government accompanied by a Motion for Leave to Proceed *in forma pauperis* (D.E. 1-2). In an order issued on March 29, 2019, the Court granted Plaintiff leave to proceed *in forma pauperis* (D.E. 10). This case has been referred to the United States Magistrate Judge for management and for all pretrial matters for determination and/or report and recommendation as appropriate. (Admin. Order 2013-05). Plaintiff filed an Amended Complaint on April 3, 2019 (D.E. 9). The Magistrate Judge did take Plaintiff's Amended Complaint into consideration in this report and recommendation because this Complaint has not yet been served, the Rule 16(b) scheduling conference has not occurred, and, therefore, the amendment is permitted as a matter of course pursuant to Rule 15(a)(1) of the Federal Rules of Civil Procedure.

The Court is required to screen *in forma pauperis* complaints and to dismiss any complaint,

or any portion thereof, if the action—

- (i) is frivolous or malicious;
- (ii) fails to state a claim on which relief may be granted; or
- (iii) seeks monetary relief against a defendant who is immune from such relief.

28 U.S.C. § 1915(e)(2)(B).

In assessing whether the Complaint in this case states a claim on which relief may be granted, the standards under Fed. R. Civ. P. 12(b)(6), as stated in *Ashcroft v. Iqbal*, 556 U.S. 662, 667-79, 129 S. Ct. 1937, 1949-50, 173 L. Ed. 2d 868 (2009), and in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-57, 127 S. Ct. 1955, 1964-66, 167 L. Ed. 2d 929 (2007), are applied. *Hill v. Lappin*, 630 F.3d 468, 470-71 (6th Cir. 2010). “Accepting all well-pleaded allegations in the complaint as true, the Court ‘consider[s] the factual allegations in [the] complaint to determine if they plausibly suggest an entitlement to relief.’” *Williams v. Curtin*, 631 F.3d 380, 383 (6th Cir. 2011) (quoting *Iqbal*, 556 U.S. at 681, 129 S. Ct. at 1951) (alteration in original). “[P]leadings that . . . are no more than conclusions are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations.” *Iqbal*, 556 U.S. at 681, 129 S. Ct. at 1950; *see also Twombly*, 550 U.S. at 555 n.3, 127 S. Ct. at 1964-65 n.3 (“Rule 8(a)(2) still requires a ‘showing,’ rather than a blanket assertion, of entitlement to relief. Without some factual allegation in the complaint, it is hard to see how a claimant could satisfy the requirement of providing not only ‘fair notice’ of the nature of the claim, but also ‘grounds’ on which the claim rests.”).

“Pro se complaints are to be held ‘to less stringent standards than formal pleadings drafted by lawyers,’ and should therefore be liberally construed.” *Williams*, 631 F.3d at 383 (quoting *Martin v. Overton*, 391 F.3d 710, 712 (6th Cir. 2004)). Pro se litigants, however, are not exempt

from the requirements of the Federal Rules of Civil Procedure. *Wells v. Brown*, 891 F.2d 591, 594 (6th Cir. 1989), *reh'g denied* (Jan. 19, 1990); *see also Brown v. Matauszak*, No. 09-2259, 2011 WL 285251, at *5 (6th Cir. Jan. 31, 2011) (affirming dismissal of pro se complaint for failure to comply with “unique pleading requirements” and stating “a court cannot ‘create a claim which [a plaintiff] has not spelled out in his pleading’”) (quoting *Clark v. Nat'l Travelers Life Ins. Co.*, 518 F.2d 1167, 1169 (6th Cir. 1975)) (alteration in original); *Payne v. Secretary of Treas.*, 73 F. App'x 836, 837 (6th Cir. 2003) (affirming *sua sponte* dismissal of complaint pursuant to Fed. R. Civ. P. 8(a)(2) and stating, “[n]either this court nor the district court is required to create Payne's claim for her”); *cf. Pliler v. Ford*, 542 U.S. 225, 231, 124 S. Ct. 2441, 2446, 159 L. Ed. 2d 338 (2004) (“District judges have no obligation to act as counsel or paralegal to pro se litigants.”)

Under § 1915(e)(2)(B), the court has the discretion to refuse to accept allegations in a complaint that are “clearly baseless,” a term encompassing claims that may be described as “fanciful, fantastic, delusional, wholly incredible, or irrational.” *Bumpas v. Corr. Corp. of America*, No. 3:10-1055, 2011 WL 3841674, at *8 (M.D. Tenn. Aug. 30, 2011) (citing *Denton v. Hernandez*, 504 U.S. 25, 32–33 (1992)). Furthermore, “a district court may, at any time, *sua sponte* dismiss a complaint for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure when the allegations of a complaint are totally implausible, attenuated, unsubstantial, frivolous, devoid of merit, or no longer open to discussion.” *Apple v. Glenn*, 183 F.3d 477, 479 (6th Cir.1999).

Plaintiff's Complaint contains the following narrative in his statement of claim:

U.S. Government under secrecy [sic] administered higher sciences into my chest and veins. It would be helpful if I can get the government employees to mention what they saw. I have abrasions on my left hand where some high sciences was introduced into me introveinlay [sic]. My blood pressure has been thrown off from there operations. Government talk out of me daily by high government.

(D.E. 1 PageID 2). In Plaintiff's Amended Complaint he stated approximately the same allegations. The undersigned finds Plaintiff's allegations to be clearly baseless, and totally implausible. Consequently, Plaintiff's Complaint warrants dismissal under both § 1915(e)(2)(B) and Rule 12(b)(1).

CONCLUSION

For all these reasons, the Magistrate Judge recommends that this Court dismiss Plaintiff's Complaint in its entirety, pursuant to 28 U.S.C. § 1915(e)(2) and Federal Rule of Civil Procedure 12(b)(1).

Respectfully Submitted this 11th day of April, 2019.

s/Jon A. York
UNITED STATES MAGISTRATE JUDGE

**ANY OBJECTIONS OR EXCEPTIONS TO THIS REPORT AND RECOMMENDATION
MUST BE FILED WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A
COPY OF THE REPORT AND RECOMMENDATION. 28 U.S.C. § 636(b)(1). FAILURE
TO FILE THEM WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF
OBJECTIONS, EXCEPTIONS, AND ANY FURTHER APPEAL.**